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The United States and the World Court

WHAT is the present status of the World Court issue? What is the meaning of President Coolidge's reference to the Court in his Armistice Day speech in Kansas City? Did he intend to prepare the American people for a subsequent announcement that, the Senate's reservations not having been unqualifiedly accepted, the Administration would consider the issue closed? Or did he, by serving notice on the other forty-eight nations involved, intend to urge them to modify the decisions reached at their Conference in Geneva last September? Is there now any basis for further negotiations between the United States and the States members of the Court?

These and other questions are likely to be discussed in the Senate when Congress re-convenes on December 7th. In the Council of the League of Nations, which convenes for its forty-third session on December 6, many of these same questions may also be discussed informally. The members of the Council know that some of the advocates of the Court in the Senate believe that the Council itself can point the way out of the *impasse* by asking the Court for an advisory opinion as to whether requests by the Council for such opinions must, in every case, be asked by a unanimous vote. If the answer of the Court should be in the affirmative, it is pointed out that each of the great powers represented in the Council would always have the right to veto any request for an advisory opinion. Such a right to veto would be as absolute as that claimed by the United States under the terms of the Senate's fifth reservation. The Geneva Conference, unwilling to grant the United States what it considered a privileged position, accepted the proposal that the United States have a position of equality with any State member of the League. It is, therefore, argued in some circles in Washington that the States members of the Court would have no further objection to accepting the American reservations unreservedly.

But many authorities here and abroad are not so optimistic. They hold that the question of technical equality is not so vital an obstacle to the acceptance of the American

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terms as is the uncertainty as to the procedure through which the United States Government would exercise its veto power. This uncertainty cannot be removed except through formal or informal negotiations. President Coolidge, in his Armistice Day speech, did not indicate whether he would contemplate an exchange of views on this point with the States members of the Court, either with each individually or with one or more of the great powers. He said in part:

> "While the nations involved cannot yet be said to have made a final determination, and from most of them no answer has been received, many of them have indicated that they are unwilling to concur in the conditions adopted by the resolution of the Senate. While no final decision can be made by our Government until final answers are received, the situation has been sufficiently developed so that I feel warranted in saying that I do not intend to ask the Senate to modify its position. I do not believe the Senate would take favorable action on any such proposal, and unless the requirements of the Senate resolution are met by the other interested nations I can see no prospect of this country adhering to the court."

U. S. SENATE VOTES ADHERENCE

A brief review of the more important developments in the World Court situation since last January is useful in considering the present status of American adherence.

On January 27, 1926, the United States Senate by a vote of 76 to 17 provided for adherence to the Permanent Court of International Justice, with five reservations. The State Department promptly communicated this action to the States which had signed the Court Protocol. Each State was asked to inform the Department whether it accepted these reservations as a "part and condition" of American adherence.

On March 2, 1926, Secretary Kellogg wrote to the Secretary-General of the League of Nations informing him of the communication sent to every State member of the Court. Included in the Secretary's letter was the following: " . . . the signature of the United States will not be affixed to the said protocol until the Governments of the Powers signatory thereto shall have signified in writing to the Government of the United States their acceptance of the foregoing conditions, reservations and understandings as a part and condition to the adherence of the United States to the said protocol and statute." *

On March 18, 1926, Secretary Kellogg's letter was brought up at a meeting of the Council of the League. Sir Austen Chamberlain, the British representative, pointed out that there would be technical difficulties in the way of accepting the United States' reservations merely through an exchange of notes. He urged that the American conditions would need to be embodied in a special agreement between the United States and the present member nations of the Court. He urged that "it should not be difficult to frame a new agreement giving satisfaction to the wishes of the United States Government, if an opportunity could be obtained for discussing with a representative of that Government the various questions raised by the terms of the Senate resolution."

CONFERENCE PROPOSED BETWEEN COURT MEMBERS AND U. S.

On Sir Austen Chamberlain's recommendations the Council of the League decided to call a conference of representatives of the member nations of the Court and of the United States, to be held in Geneva on September 1, 1926, to study "the way in which the Governments of the Signatories might accept the five reservations and conditions proposed by the Government of the United States."

On March 29, 1926, the Department of State received from the Secretary-General of the League an invitation to participate in the proposed conference. The letter of invitation emphasized the fact that it was not to be a League conference but a conference of the States signatory to the Court Protocol and the United States.

THE UNITED STATES DECLINES

The United States declined this invitation. Secretary Kellogg's reply was emphatic and he repeated his previous insistence that the United States expected the reservations to be replied to by the signatory nations acting individually and directly. He wrote, in part, as follows:

> "I do not feel that any useful purpose could be served by the designation of a delegate by my Government to attend a conference for this pur-

* This method was prescribed by the Senate in its resolution of adherence.

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pose. These reservations are plain and unequivocal and according to their terms they must be accepted by an exchange of notes between the United States and each of the forty-eight * States signatory to the Statute of the Permanent Court before the United States can become a party and sign the Protocol. The resolution specifically provided this mode of procedure.

"I have no authority to vary this mode of procedure or to modify the conditions and reservations or to interpret them, and I see no difficulty in the way of securing the assent of each signatory by direct exchange of notes, as provided for by the Senate. It would seem to me to be a matter of regret if the Council of the League should do anything to create the impression that there are substantial difficulties in the way of such direct communication. The Government does not consider that any new agreement is necessary to give effect to the conditions and reservations on which the United States is prepared to adhere to the Permanent Court. The acceptance of the reservations by all the nations signatory to the Statute of the Permanent Court constitutes such an agreement. If any machinery is necessary to give the United States an opportunity to participate through representatives for the election of judges, this should naturally be considered after the reservations have been adopted and the United States has become a party to the Statute of the Permanent Court of International Justice. If the States signatory to the Statute of the Permanent Court desire to confer among themselves, the United States would have no objection whatever to such a procedure, but under the circumstances, it does not seem appropriate that the United States should send a delegate to such a conference."

Prior to the meeting of the Conference of Court signatories, five countries replied to the State Department, accepting the Senate's reservations. These countries were Cuba, Greece, Liberia, Albania, and Luxembourg. Santo Domingo informed the State Department that its representative at Geneva had been instructed to "vote for" the American reservations, while Uruguay orally advised the State Department that it favored acceptance, but that ratification by its legislature would be necessary.

THE GENEVA CONFERENCE

The Conference of the signatory powers met on September 1, in the building of the International Labor Office in Geneva. Forty states were represented. The final report issued on September 23 was signed immediately by the representatives of thirty-five states. After prolonged discussion the conferees decided that more than an exchange of notes was necessary to alter an international treaty like the Statute of the Court. As a means, therefore, of putting the American reservations into effect, it drew up a draft Protocol, supplementary to the Court Statute which it recommended that each of the signatories conclude with the United States. This Protocol, if ratified by all of the parties concerned, would have the same force and effect as the Court Statute.

It was understood that to meet the procedure laid down by the Senate, each state would have to reply individually. However, it was agreed that all of the states would send identical replies embodying the conclusions reached at the Conference and the draft of the proposed special agreement.

The action of the Conference on the United States' terms can be best understood by a study of the text of the Senate's reservations and of the comments made by the Conference on each of them.

The following are the pertinent texts:

SENATE RESERVATIONS TO COURT ADHERENCE

"I. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

"II. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

"III. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

"IV. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

"V. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State, concerned; nor shall it, without the consent of the United

* Fifty states are now signatory to the Court Protocol.

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States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

UNITED STATES RESOLUTIONS

Resolved further, As a part of this act of ratification that the United States approve the protocol and statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other State or States can be had only by agreement thereto through general or special treaties concluded between the parties in dispute; and

Resolved further, That adherence to the said protocol and statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State; nor shall adherence to the said protocol and statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

GENEVA CONFERENCE COMMENTS ON RESERVATIONS

Reservation I.

It may be agreed that the adherence of the United States to the Protocol of December 16, 1920, and the Statute of the Permanent Court of International Justice annexed thereto shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Peace of Versailles of June 28, 1919.

Reservation II.

It may be agreed that the United States may participate, through representatives designated for the purpose and upon an equality with the other States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges, or deputy-judges of the Permanent Court of International Justice, or for the filling of vacancies.

Reservation III.

It may be agreed that the United States pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

Reservation IV.

A. It may be agreed that the United States may at any time withdraw its adherence to the Protocol of December 16, 1920.

In order to assure equality of treatment, it seems natural that the signatory States, acting together and by not less than a majority of two-thirds, should possess the corresponding right to withdraw their acceptance of the special conditions attached by the United States to its adherence to the said Protocol in the second part of the fourth reservation and in the fifth reservation. In this way the *status quo ante* could be re-established if it were found that the arrangement agreed upon was not yielding satisfactory results.

It is to be hoped, nevertheless, that no such withdrawal will be made without an attempt by a previous exchange of views to solve any difficulties which may arise.

B. It may be agreed that the Statute of the Permanent Court of International Justice annexed to the Protocol of December 16, 1920, shall not be amended without the consent of the United States.

Reservation V.

A. In the matter of advisory opinions, and in the first place as regards the first part of the fifth reservation, the Government of the United States will, no doubt, have become aware, since the despatch of its letters to the various Governments, of the provisions of Articles 73 and 74 of the Rules of Court as amended by the Court on July 31, 1926 (Annex III). It is believed that these provisions are such as to give satisfaction to the United States, having been made by the Court in exercise of its powers under Article 30 of its Statute. Moreover, the signatory States might study with the United States the possible incorporation of certain stipulations of principle on this subject in a protocol of execution such as is set forth hereafter, notably as regards the rendering of advisory opinions in public.

B. The second part of the fifth reservation makes it convenient to distinguish between advisory opinions asked for in the case of a dispute to which the United States is a party and that of advisory opinions asked for in the case of a dispute to which the United States is not a party but in which it claims an interest, or in the case of a question, other than a dispute, in which the United States claims an interest.

As regards disputes to which the United States is a party, it seems sufficient to refer to the jurisprudence of the Court, which has already had occasion to pronounce upon the matter of disputes between a Member of the League of Nations and a State not belonging to the League. This jurisprudence, as formulated in Advisory Opinion No. 5 (Eastern Carelia), given on July 23, 1923, seems to meet the desire of the United States.

As regards disputes to which the United States is not a party but in which it claims an interest, and as regards questions, other than disputes, in which the United States claims an interest, the Conference understands the object of the United States to be "to assure to itself a position of equality with States represented either on the Council or in the Assembly of the League of Nations. This principle should be agreed to." But the fifth reservation appears to rest upon the presumption that the adoption of a request for an advisory opinion by the Council or Assembly requires a unanimous vote. No such presumption, however, has so far been established. It is therefore impossible to say with certainty whether in some cases, or possibly

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in all cases, a decision by a majority is not sufficient. In any event the United States should be guaranteed a position of equality in this respect; that is to say, in any case where a State represented on the Council or in the Assembly would possess the right of preventing, by opposition in either of these bodies, the adoption of a proposal to request an advisory opinion from the Court, the United States shall enjoy an equivalent right.

Great importance is attached by the Members of the League of Nations to the value of the advisory opinions which the Court may give as provided for in the Covenant. The Conference is confident that the Government of the United States entertains no desire to diminish the value of such opinions in connection with the functioning of the League of Nations. Yet the terms employed in the fifth reservation are of such a nature as to lend themselves to a possible interpretation which might have that effect. The Members of the League of Nations would exercise their rights in the Council and in the Assembly with full knowledge of the details of the situation which has necessitated a request for an advisory opinion, as well as with full appreciation of the responsibilities which a failure to reach a solution would involve for them under the Covenant of the League of Nations. A state which is exempt from the obligations and responsibilities of the Covenant would occupy a different position. It is for this reason that the procedure to be followed by a non-member State in connection with requests for advisory opinions is a matter of importance and in consequence it is desirable that the manner in which the consent provided for in the second part of the fifth reservation will be given should form the object of a supplementary agreement which would ensure that the peaceful settlement of future differences between members of the League of Nations would not be made more difficult.

The Conference ventures to anticipate that the above conclusions will meet with acceptance by the United States. It observes that the application of some of the reservations of the United States would involve the conclusion of an appropriate agreement between the United States and the other States signatories of the Protocol of December 16, 1920, as was indeed envisaged by the Secretary of State of the United States in his reply to the Secretary-General of the League of Nations dated April 17, 1926. To this end, it is desirable that the States signatories of the Protocol of December 16, 1920, should conclude with the United States a protocol of execution which, subject to such further exchange of views as the Government of the United States may think useful, might be in the form set out below.

SUMMARY OF GENEVA DISCUSSIONS

The first three reservations were accepted promptly and unconditionally at the Geneva Conference. This means that the United States would be assured: (1) Its support of the Court would not involve it in any obligations under the terms of the Treaty of Versailles or the League of Nations; (2) It would be permitted to take part in the election of judges in both the Council and the Assembly of the League of Nations on a basis of equality with any member of the League; (3) Its share of the expenses of the Court would be such as Congress might determine to be fair.

THE FOURTH RESERVATION ACCEPTED CONDITIONALLY

The fourth reservation provided that (1) The United States may at any time withdraw its adherence to the Court; (2) The Statute on which the Court is based may not be amended without the consent of the American Government. This caused prolonged debate. Many of the conferees feared that to grant either of these demands would be to give the United States a privileged position. They argued: It is not clear that the States signatory to the Court Protocol may withdraw their adherence. No specific provision is made in either the Protocol or the Statute for such withdrawal.

But it was finally agreed that the United States might withdraw at any time provided, however, that the other signatories of the Court Protocol might by a two-thirds vote withdraw their consent to the second half of the United States' fourth reservation and to the fifth reservation, "if (as the Conference report explains) it were found that the arrangement agreed upon was not yielding satisfactory results."

The decision to reserve the right of the signatory States to withdraw their assent to the second half of the fourth reservation (which gives the United States a veto against amendments to the Court Statute), was apparently motivated by two considerations: (1) Uncertainty as to whether the Statute may or may not be amended without unanimous consent of all the parties to it; (2) It never has been amended and the question of method had not previously been raised.

If, as some of the conferees argued, the Statute, like a treaty, can be amended only with the consent of all the parties involved, then the United States' reservation would be accepted automatically as it would consti-

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tute only a demand for a position of equality, and not for one of privilege. This view prevailed and the United States was assured its desired right of veto. The Conference, however, included in the preliminary draft Protocol the following: "Article II—No amendment of the Statute annexed to the Protocol of December 16, 1920, may be made without the consent of *all the contracting parties.*" (The italics are not in the Article.)

Under this provision the reservation of the United States secures no privileged position, but only one of equality. It was accepted by the Conference on this interpretation.

DISCUSSION OF FIFTH RESERVATION

It was the fifth reservation which caused the conferees the gravest concern. To many of the conferees parts of this reservation seemed capable of conflicting interpretations, some of which, if insisted upon by the United States, would seriously interfere with what they felt to be the increasingly valuable advisory opinion procedure. Many speakers reiterated their belief that no agreement should be reached which would interfere with the growing tendency of the Council of the League of Nations to ease international friction points by referring legal aspects of such problems to the Court for advisory opinion. Valuable though all admitted the support of the United States to the Court would be, many of the conferees were frank in the expression of their opinion that such support ought not be purchased at the price of sacrificing or seriously weakening the present advisory procedure.

The first part of the fifth reservation, however, was readily accepted. The Conference pointed out that the rules of the Court (Articles 71-74),* especially as amended July 31, 1926, provided for full publicity in the procedure for reaching and rendering advisory opinions. It was recognized that the rules of the Court may be changed by the Court itself and that, therefore, the existing rules might not be deemed by the United States an adequate guarantee. Therefore, the Conference included in its preliminary draft of the Protocol the following:

> "Article 3. The Court shall render advisory opinions in public session."

If incorporated after formal agreement between the United States and the other members of the Court, this article would have the same force as if it were in the Statute of the Court. The Conference, therefore, felt it would meet in full the requirements of the American reservation on this point.

It is the second half of the fifth reservation which was most difficult for the Geneva Conference to understand or to accept.

The claim that the Court shall not "without the consent of the United States entertain any request for an advisory opinion touching any dispute in which the United States has or claims an interest," seemed to the Conference tantamount to a demand for a privileged position, which ought not be granted. Moreover, many of the conferees pointed out that the language of the reservation was capable of diverse and conflicting interpretations.

DISPUTES IN WHICH U. S. HAS AN INTEREST

The Conference, therefore, decided: (1) That in no dispute to which the United States is a party could an advisory opinion be asked of the Court by the Council or the Assembly without the consent of the American Government. This pledge is not however embodied in the Protocol drafted by the Geneva Conference as its proposed form of agreement between the United States and the States' members of the Court. Instead the Conference seemed to assume that the Court's pronouncement in the Eastern Carelia case is in itself a sufficient guarantee on this point. Probably if the United States desired, the precedent set in this case would be written into the Protocol.

(In the Eastern Carelia case the Court refused to entertain the Council's request for an advisory opinion on the ground that since Russia, one of the parties to the dispute, did not accept the Court's jurisdiction, it would be impossible to complete the investigation of the case. Explaining its refusal to give an opinion, the Court stated that it was accepting and applying a principle which is the very basis of international law: "That no State can without its consent be compelled to submit its disputes with other States either to mediation or to

* See page 241

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arbitration, or to any other kind of pacific settlement." The jurists added: "The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activities as a Court.")

DISPUTES IN WHICH U. S. CLAIMS AN INTEREST

(2) As regards disputes or questions to which the United States is not a party, but in which it claims an interest, the Conference expressed the opinion that the object of the United States' reservation was "to assure to itself a position of equality with States represented either on the Council or in the Assembly of the League of Nations. This principle should be agreed to."

But what does this mean? If the States permanently members of the Council have the right to veto any requests for an advisory opinion whether they are parties to the dispute or not, then the principle agreed to above would be an acceptance of the United States' claim. But the Conference was careful to point out that the presumption in the Senate debates that the permanent members of the Council had this absolute veto has not "so far been established, and that it is, therefore, impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient."

(Though technically this statement is doubtless accurate, none the less there is substantial ground for the belief reiterated in the Senate debates that any one of the Great Powers can, if it chooses, block any vote for an advisory opinion to which it may be opposed. But granted that this Senatorial contention may be substantially correct at the present time, it is impossible now to forecast future developments in this respect. The change in the composition of the Council and the increase in the moral authority of the leading group of 'non-great powers' — the Scandinavian States and Holland — since 1918 are factors which should be borne in mind. Moreover, it was argued at the Geneva Conference that it is unreasonable to ask that written rule should be drawn up to crystallize an essentially unconstitutional and fluid condition.)

It was suggested in the Conference debates that the Council should ask the Court itself to determine through an advisory opinion what the procedure of asking such opinions in the Council should be. If the Court should decide that any member of the Council might exercise a veto, then the United States' claim would be granted automatically. But the Conference considered it undesirable at this time to force a decision on this point. Therefore, it satisfied itself by suggesting to the United States the following formula: (Third paragraph of Article IV of the Protocol proposed to be made between the United States and the signatories);

> "Should the United States offer objection to advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party, or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for an opinion given by a member of the League of Nations either in the Assembly or the Council."

Thus the Conference proposed to the United States a position of equality, but refused what it believed would be a position of privilege.

DIFFICULTIES OF PROCEDURE UNDER THE FIFTH RESERVATION

Aside from the question of equality or privilege, the fifth reservation seemed to the Geneva Conference difficult of unqualified acceptance because of the uncertainty about the procedure for applying it in the United States. The Conference did not know whether under the Constitution of the United States a claim of interest on behalf of this country in any question on which the asking of an advisory opinion was being considered would be made by the President or by the President with the advice and consent of the Senate. If the latter, they asked, how could months of delay be avoided during the periods when Congress was not in session? If the former, what assurance would there be that Washington would act promptly? In any case, would not the American veto have to be exercised after the Council as a whole had decided to ask for an opinion? In this event, the conferees felt that the Council, rather than risk the danger of having its decision publicly revoked, would tend to use the advisory opinion procedure less and less.

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Historical Background of the World Court

The Statute of the Permanent Court of International Justice was drafted by a Committee of eleven jurists of which Mr. Elihu Root was a member, appointed in 1920 by the Council of the League of Nations under the terms of Article XIV of the League Covenant. The article reads as follows:

> "The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

On December 16, 1920, the Assembly of the League adopted the statute proposed by the jurists with only one change. By September, 1921, a majority of the members of the League had adhered to the Court Protocol and the Assembly and Council proceeded with the election of the judges.

The plan for the election of the judges had been proposed by Mr. Elihu Root. Nominations are made by the national groups composing the Permanent Court of Arbitration at the Hague, each group nominating four persons, not more than two of them to be of the group's own nationality. The Assembly and the Council of the League, acting separately, select eleven judges and four deputy judges from these nominees and no election is declared until the candidate has received a majority vote of both bodies. These judges, according to the Statute of the Court are elected "regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juriconsults of recognized competence in international law."

The Court's jurisdiction "comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." Further, the Court applies:

1. "International conventions whether general or particular, establishing rules expressly recognized by the contesting States;
2. "International custom, as evidence of a general practice accepted as law;
3. "The general principles of law recognized by civilized nations;
4. "Subject to the provisions of Article 59,"* (of the Court Statute) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law."**

The Court met for the first time on January 30, 1922. Since then it has met regularly once a year as provided in the Statute, and has besides held extraordinary sessions. It has handed down to date (December 1, 1926) seven judgments and rendered thirteen advisory opinions.

JUDGMENTS RENDERED BY THE COURT

A list of the judgments handed down by the Court follows:

(1) Case of the S. S. Wimbledon, involving freedom of the Kiel Canal. Parties: Great Britain, France, Italy, Japan: Germany. Judgment handed down August 17, 1923.

The Court held that Article 380 of the Treaty of Versailles forbids Germany's applying to the Kiel Canal a neutrality order which would close the Canal to a British-owned, French chartered vessel carrying munitions to Danzig for transshipment to Poland during the war between Poland and Russia.

(2) Mavrommatis Palestine concessions, involving jurisdiction of the Court to decide the rights possessed by Greek subjects in Palestine. Parties: Greece and Great Britain. Judgment handed down August 30, 1924.

The Court held that under the mandate for Palestine, the Court has jurisdiction of a case brought by Greece against Great Britain, notwithstanding the latter's objection.

* Article 59. "This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono* if the parties agree thereto."

** Article 38 of the Court Statute.

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(3 and 5) Interpretation of reparation clause in the peace treaty of Neuilly, signed November 27, 1919 between the Allied Powers and Bulgaria. Parties: Bulgaria and Greece. First judgment handed down September 12, 1924.

The Court ruled that the Treaty of Neuilly was held to authorize certain classes of claims against Bulgaria, for damages both as regards property and as regards persons.

Second judgment handed down March 26, 1925.

The Court held that interpretation of a previous judgment under Article 60 of the Court Statute will not be granted when it goes beyond the limits of the judgment itself.

(4) Mavrommatis Jerusalem concessions. Parties: Greece and Great Britain. Judgment handed down March 26, 1925.

The Court held that the British Government, as mandatory had bound itself to respect certain concessions in Palestine and while a grant of new concessions may not have been in conformity with its obligations, no loss resulted and hence no liability for indemnity is imposed.

(6) German interests and claims in Polish Upper Silesia. Parties: Germany and Poland. Judgment handed down August 25, 1925.

The Court held that under the German-Polish Convention the Court has jurisdiction to determine the legality of certain expropriations made by Poland in spite of the latter's objections.

(7) German interests and claims in Polish Upper Silesia. Parties: Germany and Poland. Judgment handed down May 25, 1926.

ADVISORY OPINIONS RENDERED BY THE COURT

At the request of the Council of the League of Nations, the Court has rendered the following advisory opinions:

(1) The nomination of the workers' delegate for the Netherlands to the third session of the International Labor Conference.

"Was the workers' delegate for the Netherlands at the third session of the International Labor Conference nominated in accordance with the provisions of Paragraph 3 of Article 289 of the Treaty of Versailles?"

The Court's opinion delivered July 31, 1922, was that a member of the international labor organization is not bound to consult the largest employers' or workers' organization in selecting its delegates to the International Labor Conference, where other organizations consulted total more members.

(2) Competence of the International Labor Organization in regard to agriculture.

"Does the competence of the International Labor Organization extend to the international regulation of the conditions of labor of persons employed in agriculture?"

The Court's opinion handed down August 12, 1922, was that the competence of the International Labor Organization extends to the conditions of labor of persons employed in agriculture.

(3) The competence of the International Labor Organization in regard to agriculture.

"Does the examination of proposals for the organization and development of methods of agricultural developments and of other questions of like nature fall within the competence of the International Labor Organization?"

The Court's opinion handed down August 12, 1922, was that the competence of the International Labor Organization extends to agricultural protection only in so far as conditions of labor are concerned.

(4) Nationality decrees in Tunis and Morocco. Parties: France and Great Britain.

"Is or is not the dispute between France and Great Britain as to the nationality decrees issued in Tunis and Morocco (French zone) on November 8, 1921, and their application to British subjects, by international law solely a matter of domestic jurisdiction?"

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The Court's opinion was handed down on February 7, 1923.

The Court held that the British-French dispute over nationality decrees in Tunis and Morocco is not by international law solely a matter of domestic jurisdiction, (within Paragraph 8, Article 15 of the League Covenant) though nationality questions in general fall within a state's domestic jurisdiction.

THE EASTERN CARELIA CASE

(5) The status of Eastern Carelia. Dispute between a member (Finland) and a non-member of the League of Nations (Russia).

"Do Articles 10 and 11 of the Treaty of Peace between Finland and Russia, signed at Dorpat on October 14, 1920, and the annexed Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia constitute engagements of an international character which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein?"

The Court refused on July 23, 1923 to give an opinion on the grounds that Russia had not consented to the submission of this dispute to pacific settlement.

(6) Protection of German settlers in Poland. Parties: Germany and Poland.

The Court was requested for an advisory opinion on two questions:

1. "Whether Poland's refusal to recognize contracts and leases made by certain German colonists with the German Colonization Commissions before the end of the war involved an international obligation within the competence of the League of Nations under the Polish Minorities Treaty of June 28, 1919?" and
2. "If so, whether Poland's position with respect to these contracts and leases was in conformity with her international obligations?"

The Court's opinion was delivered on September 10, 1923.

1. The Court held that Poland's international obligations under the Minorities Treaty of June 28, 1919 involved the protection of German colonists sent into German Poland before the war, requiring Poland to respect contracts and leases made by the German Government with these colonists; and
2. The position taken by Poland after the war was not in conformity with these international obligations.

(7) Acquisition of Polish nationality by German settlers. Parties: Germany and Poland.

"What is the competence of the League of Nations under the Polish Minorities Treaty between the Allies and Poland, and what is the proper interpretation to be placed on Article 4 of that Treaty?"

The opinion of the Court was delivered September 15, 1923.

The Court held that under the Treaty for the protection of minorities in Poland, the Council of the League of Nations is competent to deal with questions as to acquisition of Polish nationality by German settlers; Article 4 of the Treaty makes habitual residence of parents at the date of birth of settlers concerned, but not at any later date, a condition of acquiring nationality.

(8) The Jaworzina boundary question. Parties: Poland and Czechoslovakia.

The Court was asked whether the delimitation of the frontier between Poland and Czechoslovakia in the region known as Spisz district (Jaworzina) was still open or whether it should be considered as settled by a definitive decision of the Conference of Ambassadors.

The Court held on December 6, 1923, after an extraordinary session that a decision by the Conference of Ambassadors with reference to the boundary between Poland and Czechoslovakia, accepted by both states, was definitive and that the question was not reopened by later negotiations.

(9) Monastery of Saint-Naoum on the Albanian frontier. Parties: Albania and the Kingdom of the Serbs, Croats and Slovenes.

"Have the principal Allied Powers (by the decision of the Conference of Ambassadors of December 6, 1922, exhausted, in regard to the frontier between Albania and the Kingdom of the Serbs, Croats, and Slovenes at the Monastery of Saint-Naoum, the Mission, such as it has been recognized by

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the interested parties, which is contemplated by unanimous resolution of the Assembly of the League of Nations of October 2, 1921?"

The opinion of the Court was delivered September 4, 1924.

The Court held that by a decision of the Conference of Ambassadors December 6, 1922, the principal Allied Powers exhausted the mission contemplated by a resolution of the Assembly of the League of Nations of October 2, 1921 with respect to the frontier between Albania and the Kingdom of the Serbs, Croats and Slovenes at the Monastery of Saint-Naoum.

(10) The exchange of Greek and Turkish populations. Parties: Turkey and Greece.

"What meaning and scope should be attributed to the word 'established' in Article 2 of the Convention of Lausanne of January 30, 1923, regarding the exchange of Greek and Turkish populations? What conditions must the persons who are described in Article 2 of the Convention of Lausanne under the terms 'Greek inhabitants of Constantinople' fulfill in order that they may be considered as 'established' under the terms of the Convention and exempt from compulsory exchange?"

The Court's opinion was delivered February 21, 1925 after an extraordinary session.

The Court held that to be considered as "established" in Constantinople under the terms of the Convention of Lausanne of January 30, 1923 and therefore not included in the exchange of populations between Greece and Turkey, Greek inhabitants must reside within certain boundaries of the Prefecture of the City of Constantinople, and must have arrived prior to October 30, 1918 with an intention to reside there for an extended period.

(11) The Polish postal service in the Free City of Danzig.

(1) "Is there in force a decision of General Haking (previous High Commissioner) which decides the points at issue regarding the Polish postal service, and if so, does such decision prevent reconsideration by the High Commissioner or the Council of all or any of the points in question?"

(2) "If the questions set out at (a) and (b) (below) have not been decided by General Haking is

(a) "The Polish postal service at the Port of Danzig restricted to operations which can be performed entirely within its premises in the Heveliusplatz, or is it entitled to set up letter boxes and collect and deliver postal matter outside those premises?"

(b) "Is the use of said service confined to Polish authorities and officials, or can it be used by the public?"

The Court's opinion was delivered February 21, 1925 after an extraordinary session.

It held that the Polish Government is entitled under treaties in force to maintain a postal service in the port of Danzig not restricted to a single office, which may be open to the public use.

THE MOSUL CASE

(12) Request for an opinion concerning the expulsion from Constantinople of the Greek Oecumenical Patriarch. The application was later withdrawn at the request of Greece, the matter having been settled satisfactorily.

(12) Nature of the Council's action with respect to the frontier between Turkey and Iraq.

1. "What is the character of the decision to be taken by the Council in virtue of Article 3, paragraph 2, of the Treaty of Lausanne? Is it, for example, an arbital award, a recommendation, or a simple mediation?"

2. "Must the decision be unanimous, or may it be taken by a majority? May the representatives of the interested parties take part in the vote?" The Court's opinion was delivered on November 21, 1925, after a special session.

The reference of a dispute as contained in Article 3 of the Treaty of Lausanne empowers the Council to give a binding decision for which the votes of all members of the Council except the parties to the dispute are required.

(13) Competence of the International Labor Organization to regulate, incidentally, the personal work of the employer.

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"Is it within the competence of the International Labor Organization to draw up and to propose labor legislation which, in order to protect certain classes of workers, also regulates incidentally the same work when performed by the employer himself?"

The Court's opinion was delivered on July 23, 1926. It held that the International Labor Organization had discretionary powers to exercise judgment in the circumstances of each case though these powers were not "unlimited."

ANNEX I

STATES SIGNATORY TO THE PROTOCOL OF SIGNATURE OF THE COURT STATUTE:

Abyssinia*
Albania
Australia
Austria*
Belgium*
Bolivia
Brazil*
Bulgaria*
Canada
Chile
China*
Colombia
Costa Rica*
Cuba
Czechoslovakia
Denmark*
Dominican Republic*
Esthonia*
Finland*
France*
Great Britain
Greece
Haiti*
Hungary
India
Ireland
Italy
Japan
Latvia*
Liberia*
Lithuania*
Luxemburg*
Netherlands*
New Zealand
Norway*
Panama*
Paraguay
Persia
Poland
Portugal*
Rumania
Salvador*
Serb-Croat-Slovene State
Siam
South Africa
Spain
Sweden*
Switzerland*
Uruguay*
Venezuela

The States marked * have signed the Optional Clause annexed to the Court Protocol for compulsory jurisdiction of the Court.

The text of the Optional Clause is as follows:

"The undersigned, being duly authorized thereto, further declare, on behalf of their Government, that from this date they accept as compulsory *ipso facto* and without special convention, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court. . . . "

Article 36, paragraph 2, of the Court Statute, reads as follows:

"The members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, decare that they recognize as compulsory, *ipso facto* and without special agreement in relation to any other member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) The interpretation of a treaty;

(b) Any question international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international dispute.

"The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several of certain Members or States, or for a certain time.

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

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ANNEX II

Extract From The Revised Rules of Court of Permanent Court of International Justice.

(Articles 71 and 74, as printed herewith, were amended on July 31, 1926)

Article 71.

Advisory opinions shall be given after deliberation by the full Court. They shall mention the number of the judges constituting the majority.

Dissenting judges may, if they so desire, attach to the opinion of the Court either an exposition of their individual opinion or the statement of their dissent.

Article 74.

Advisory opinions shall be read in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States, of Members of the League and of International organizations immediately concerned. The Registrar shall take the necessary steps in order to ensure that the text of the advisory opinion is in the hands of the Secretary-General at the seat of the League at the date and hour fixed for the meeting held for the reading of the opinion.

Any advisory opinion which may be given by the Court, and the request in response to which it is given, shall be printed and published in a special collection for which the Registrar shall be responsible.

LIST OF REFERENCES

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